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**ERIC ELDRED, ET AL., PETITIONERS v. JOHN D. ASHCROFT,
ATTORNEY GENERAL**

No. 01-618

SUPREME COURT OF THE UNITED STATES

537 U.S. 186

**October 9, 2002, Argued
January 15, 2003, Decided**

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the authority the Constitution assigns to Congress to prescribe the duration of copyrights. The Copyright and Patent Clause of the Constitution, Art. I, § 8, cl. 8, provides as to copyrights: "Congress shall have Power . . . to promote the Progress of Science . . . by securing [to Authors] for limited Times . . . the exclusive Right to their . . . Writings." In 1998, in the measure here under inspection, Congress enlarged the duration of copyrights by 20 years. Copyright Term Extension Act (CTEA), Pub. L. 105-298, § 102(b) and (d), 112 Stat. 2827-2828 (amending 17 U.S.C. §§ 302, 304). As in the case of prior extensions, principally in 1831, 1909, and 1976, Congress provided for application of the enlarged terms to existing and future copyrights alike.

Petitioners are individuals and businesses whose products or services build on copyrighted works that have gone into the public domain. They seek a determination that the CTEA fails constitutional review under both the Copyright Clause's "limited Times" prescription and the First Amendment's free speech guarantee. Under the 1976 Copyright Act, copyright protection generally lasted from the work's creation until 50 years after the author's death. Pub. L. 94-553, § 302(a), 90 Stat. 2572 (1976 Act). Under the CTEA, most copyrights now run from creation until 70 years after the author's death. 17 U.S.C. § 302(a). Petitioners do not challenge the "life-plus-70-years" time span itself. "Whether 50 years is enough, or 70 years too much," they acknowledge, "is not a judgment meet for this Court." . . . Congress went awry, petitioners maintain, not with respect to newly created works, but in enlarging the term for published works with existing copyrights. The "limited Time" in effect when a copyright is secured, petitioners urge, becomes the constitutional boundary, a clear line beyond the power of Congress to extend. See *ibid.* As to the First Amendment, petitioners contend that the CTEA is a content-neutral regulation of speech that fails inspection under the heightened judicial scrutiny appropriate for such regulations.

In accord with the District Court and the Court of Appeals, we reject petitioners' challenges to the CTEA. In that 1998 legislation, as in all previous copyright term extensions, Congress placed existing and future copyrights in parity. In prescribing that alignment, we hold, Congress acted within its authority and did not transgress constitutional limitations.

I

A

We evaluate petitioners' challenge to the constitutionality of the CTEA against the backdrop of Congress' previous exercises of its authority under the Copyright Clause. The Nation's first copyright statute, enacted in 1790, provided a federal copyright term of 14 years from the date of publication, renewable for an additional 14 years if the author survived the first term. Act of May 31, 1790, ch. 15, § 1, 1 Stat. 124 (1790 Act). The 1790 Act's renewable 14-year term applied to existing works (*i.e.*, works already published and works created but not yet published) and future works alike. *Ibid.* Congress expanded the federal copyright term to 42 years in 1831 (28 years from publication, renewable for an additional 14 years), and to 56 years in 1909 (28 years from publication, renewable for an additional 28 years). Act of Feb. 3, 1831, ch. 16, §§ 1, 16, 4 Stat. 436, 439 (1831 Act); Act of Mar. 4, 1909, ch. 320, §§ 23-24, 35 Stat. 1080-1081 (1909 Act). Both times, Congress applied the new copyright term to existing and future works, 1831 Act §§ 1, 16; 1909 Act §§ 23-24; to qualify for the 1831 extension, an existing work had to be in its initial copyright term at the time the Act became effective, 1831 Act §§ 1, 16.

In 1976, Congress altered the method for computing federal copyright terms. 1976 Act §§ 302-304. For works created by identified natural persons, the 1976 Act provided that federal copyright protection would run from the work's creation, not -- as in the 1790, 1831, and 1909 Acts -- its publication; protection would last until 50 years after the author's death. § 302(a). In these respects, the 1976 Act aligned United States copyright terms with the then-dominant international standard adopted under the Berne Convention for the Protection of Literary and Artistic Works. See H. R. Rep. No. 94-1476, p. 135 (1976). For anonymous works, pseudonymous works, and works made for hire, the 1976 Act provided a term of 75 years from publication or 100 years from creation, whichever expired first. § 302(c).

These new copyright terms, the 1976 Act instructed, governed all works not published by its effective date of January 1, 1978, regardless of when the works were created. §§302-303. For published works with existing copyrights as of that date, the 1976 Act granted a copyright term of 75 years from the date of publication, § 304(a) and (b), a 19-year increase over the 56-year term applicable under the 1909 Act.

The measure at issue here, the CTEA, installed the fourth major duration extension of federal copyrights. Retaining the general structure of the 1976 Act, the CTEA enlarges the terms of all existing and future copyrights by 20 years. For works created by identified natural persons, the term now lasts from creation until 70 years after the author's death. *17 U.S.C. § 302(a)*. This standard harmonizes the baseline United States copyright term with the term adopted by the European Union in 1993. See Council Directive 93/98/EEC of 29 October 1993 Harmonizing the Term of Protection of Copyright and Certain Related Rights, 1993 Official J. Eur. Cmty. 290 (EU Council Directive 93/98). For anonymous works, pseudonymous works, and works made for hire, the term is 95 years from publication or 120 years from creation, whichever expires first. *17 U.S.C. § 302(c)*.

Paralleling the 1976 Act, the CTEA applies these new terms to all works not published by January 1, 1978. §§ 302(a), 303(a). For works published before 1978 with existing copyrights as of the CTEA's effective date, the CTEA extends the term to 95 years from publication. § 304(a) and (b). Thus, in common with the 1831, 1909, and 1976 Acts, the CTEA's new terms apply to both future and existing copyrights.

B

Petitioners' suit challenges the CTEA's constitutionality under both the Copyright Clause and the First Amendment. On cross-motions for judgment on the pleadings, the District Court entered judgment for the Attorney General (respondent here). *Eldred v. Reno*, 74 F. Supp. 2d 1 (DC 1999). The court held that the CTEA does not violate the "limited Times" restriction of the Copyright Clause because the CTEA's terms, though longer than the 1976 Act's terms, are still limited, not perpetual, and therefore fit within Congress' discretion. *Id.*, at 3. The court also held that "there are no First Amendment rights to use the copyrighted works of others." *Ibid.*

The Court of Appeals for the District of Columbia Circuit affirmed. *Eldred v. Reno*, 239 F.3d 372, 345 U.S. App. D.C. 89, (2001). In that court's unanimous view, *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 85 L. Ed. 2d 588, 105 S. Ct. 2218 (1985), foreclosed petitioners' First Amendment challenge to the CTEA. 239 F.3d at 375. Copyright, the court reasoned, does not impermissibly restrict free speech, for it grants the author an exclusive right only to the specific form of expression; it does not shield any idea or fact contained in the copyrighted work, and it allows for "fair use" even of the expression itself. *Id.*, 239 F.3d at 375-376.

...

We granted certiorari to address two questions: whether the CTEA's extension of existing copyrights exceeds Congress' power under the Copyright Clause; and whether the CTEA's extension of existing and future copyrights violates the *First Amendment*. *Eldred v. Ashcroft*, 534 U.S. 1126, 1160, 151 L. Ed. 2d 966, 122 S. Ct. 1062 (2002). We now answer those two questions in the negative and affirm.

II

[The Court's analysis concerning the Copyright Clause is omitted.]

III

Petitioners separately argue that the CTEA is a content-neutral regulation of speech that fails heightened judicial review under the First Amendment. We reject petitioners' plea for imposition of uncommonly strict scrutiny on a copyright scheme that incorporates its own speech-protective purposes and safeguards. The Copyright Clause and First Amendment were adopted close in time. This proximity indicates that, in the Framers' view, copyright's limited monopolies are compatible with free speech principles. Indeed, copyright's purpose is to *promote* the creation and publication of free expression. As *Harper & Row* observed: "The Framers intended copyright itself to be the engine of free expression. By establishing a marketable right to the use of one's expression, copyright supplies the economic incentive to create and disseminate ideas." 471 U.S., at 558.

In addition to spurring the creation and publication of new expression, copyright law contains built-in First Amendment accommodations. See *id.*, at 560. First, it distinguishes between ideas and expression and makes only the latter eligible for copyright protection. Specifically, 17 U.S.C. § 102(b) provides: "In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work." As

we said in *Harper & Row*, this "idea/expression dichotomy strikes a definitional balance between the First Amendment and the Copyright Act by permitting free communication of facts while still protecting an author's expression." 471 U.S., at 556 (internal quotation marks omitted). Due to this distinction, every idea, theory, and fact in a copyrighted work becomes instantly available for public exploitation at the moment of publication. See *Feist*, 499 U.S., at 349-350.

Second, the "fair use" defense allows the public to use not only facts and ideas contained in a copyrighted work, but also expression itself in certain circumstances. Codified at 17 U.S.C. § 107, the defense provides: "The fair use of a copyrighted work, including such use by reproduction in copies . . . , for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright." The fair use defense affords considerable "latitude for scholarship and comment," *Harper & Row*, 471 U.S., at 560, and even for parody, see *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994) (rap group's musical parody of Roy Orbison's "Oh, Pretty Woman" may be fair use).

The CTEA itself supplements these traditional First Amendment safeguards. First, it allows libraries, archives, and similar institutions to "reproduce" and "distribute, display, or perform in facsimile or digital form" copies of certain published works "during the last 20 years of any term of copyright . . . for purposes of preservation, scholarship, or research" if the work is not already being exploited commercially and further copies are unavailable at a reasonable price. 17 U.S.C. § 108(h); see Brief for Respondent 36. Second, Title II of the CTEA, known as the Fairness in Music Licensing Act of 1998, exempts small businesses, restaurants, and like entities from having to pay performance royalties on music played from licensed radio, television, and similar facilities. 17 U.S.C. § 110(5)(B); see Brief for Representative F. James Sensenbrenner, Jr., et al. as *Amici Curiae* 5-6, n. 3.

Finally, the case petitioners principally rely upon for their First Amendment argument, *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 129 L. Ed. 2d 497, 114 S. Ct. 2445 (1994), bears little on copyright. The statute at issue in *Turner* required cable operators to carry and transmit broadcast stations through their proprietary cable systems. Those "must-carry" provisions, we explained, implicated "the heart of the First Amendment," namely, "the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence." *Id.*, at 641.

The CTEA, in contrast, does not oblige anyone to reproduce another's speech against the carrier's will. Instead, it protects authors' original expression from unrestricted exploitation. Protection of that order does not raise the free speech concerns present when the government compels or burdens the communication of particular facts or ideas. The First Amendment securely protects the freedom to make -- or decline to make -- one's own speech; it bears less heavily when speakers assert the right to make other people's speeches. To the extent such assertions raise First Amendment concerns, copyright's built-in free speech safeguards are generally adequate to address them. We recognize that the D. C. Circuit spoke too broadly when it declared copyrights "categorically immune from challenges under the First Amendment." 239 F.3d at 375. But when, as in this case, Congress has not altered the traditional contours of copyright protection, further First Amendment scrutiny is unnecessary. See *Harper & Row*, 471 U.S., at 560; cf. *San Francisco Arts*

& Athletics, Inc. v. United States Olympic Comm., 483 U.S. 522, 97 L. Ed. 2d 427, 107 S. Ct. 2971 (1987).¹

IV

If petitioners' vision of the Copyright Clause held sway, it would do more than render the CTEA's duration extensions unconstitutional as to existing works. Indeed, petitioners' assertion that the provisions of the CTEA are not severable would make the CTEA's enlarged terms invalid even as to tomorrow's work. The 1976 Act's time extensions, which set the pattern that the CTEA followed, would be vulnerable as well.

As we read the Framers' instruction, the Copyright Clause empowers Congress to determine the intellectual property regimes that, overall, in that body's judgment, will serve the ends of the Clause. See *Graham*, 383 U.S., at 6 (Congress may "implement the stated purpose of the Framers by selecting the policy which *in its judgment* best effectuates the constitutional aim." (emphasis added)). Beneath the facade of their inventive constitutional interpretation, petitioners forcefully urge that Congress pursued very bad policy in prescribing the CTEA's long terms. The wisdom of Congress' action, however, is not within our province to second guess. Satisfied that the legislation before us remains inside the domain the Constitution assigns to the First Branch, we affirm the judgment of the Court of Appeals.

It is so ordered.

Dissenting opinions by Justices Stevens and Breyer are omitted

¹ We are not persuaded by petitioners' attempt to distinguish *Harper & Row* on the ground that it involved an infringement suit rather than a declaratory action of the kind here presented. As respondent observes, the same legal question can arise in either posture. See Brief for Respondent 42. In both postures, it is appropriate to construe copyright's internal safeguards to accommodate First Amendment concerns. Cf. *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 78, 130 L. Ed. 2d 372, 115 S. Ct. 464 (1994) ("It is . . . incumbent upon us to read the statute to eliminate [serious constitutional] doubts so long as such a reading is not plainly contrary to the intent of Congress.").